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10/501,178	07/09/2004	Werner Fritz Dubach	F-336	7876
42419	7590	03/26/2008	EXAMINER	
PAULEY PETERSEN & ERICKSON			MCKINLEY, CHRISTOPHER BRIAN	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/501,178	<b>Applicant(s)</b> DUBACH, WERNER FRITZ
	<b>Examiner</b> CHRISTOPHER B. MCKINLEY	<b>Art Unit</b> 3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 10 December 2007.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-26 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-26 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

**REOPENING PROSECUTION**

1. In view of the appeal brief filed on 12/10/2007 and the arguments set forth therein, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 15-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 15 recites the limitation, "wherein an injection mold for manufacturing the plastic closure has two plates, one of the plates has cores and an other of the plates has cavities, and at least one of the plates on the surfaces parallel to an extension of the plates is free of one recesses and protuberances." This claims introduces an apparatus for making a closure rendering it unclear. Are the claims drawn to a product or an apparatus? It appears that the claims are crossing two statutory classes of invention. Applicant is required to clarify what is being claimed in response to this Office action.

***Claim Rejections - 35 USC § 103***

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5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3, 6-8 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leach (2,961,119) in view of Dubach (5,558,239). Leach discloses the limitations of the claims including a plastic closure (fig. 1) comprising a lower part (15), a cap (16), a hinge (17), all of which are manufactured in a closed state (col. 2, line 57) and connected one to another by at least one separation seam (33), the lateral walls of the cap and lower part are arranged on top of one another in a flush manner (fig. 1), said seams connect a guarantee strip to the lower part and the cap (fig. 3, 32), said separation seams run in two planes perpendicular to the central middle axis of the closure (fig. 1) and wherein intermediate elements are separated from the lateral sidewall by a gap (figs. 2 and 3) also connected to the walls by separation seams. Leach excludes what Dubach teaches, a snap hinge formed of two film hinges that follow a course that centrally approach one another and diverge from one another (fig. 3, 3), contacting each other at a middle portion following a curved course and sharp bend and the film hinges enclosing two lateral intermediate elements for the purpose of imparting a toggle function to the cap between opening and closing positions. Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to have modified Leach with a snap hinge formed of two film hinges that follow a course that centrally approach one another and diverge from one another,

contacting each other at a middle portion following a curved course and sharp bend and the film hinges enclosing two lateral intermediate elements, as taught by Dubach, in order to impart a toggle function to the cap between opening and closing positions.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as described in par. 6 in view of Mueller et al. (2003/0116879). The references as described in par. 6 disclose the limitations of the claims substantially excluding inward and/or outward formations on the inner surfaces of the closure. However, Mueller et al. teaches inner surfaces of the lateral wall's lower part having inward and/or outward formations (fig. 3, 38) for the purpose of engaging the grooves or beads on the container neck (paragraph 86). Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to have modified the references as described in par. 6 with inward and/or outward formations (fig. 3, 38) on an inner surface of the closure, as taught by Mueller, for the purpose of engaging grooves or beads on the container neck.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as described in par. 6 in view of Harrold et al. (6,631,820). The references as described in par. 6 disclose the limitations of the claims excluding inward and/or outward formations on the outer surfaces of the closure. However, Harrold et al. teaches inward and/or outward formations on the outer surfaces of the closure (fig. 1, 42) for the purpose of providing vertical support and stability to the closure. Therefore it

would have been obvious to one having ordinary skill in the art of invention to have modified the references as described in par. 6 with inward and/or outward formations on the outer surfaces of the closure, as taught by Harrold, in order to provide vertical support and stability to the closure.

9. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as described in par. 6 in view of Neveras et al. (5,386,918). The references as described in par. 6discloses the limitations of the claims, as described in par. 5, excluding two separations seams inclined to the central middle axis of the closure. However, Neveras et al. teaches a cap capable of having two separation seams inclined to the central middle axis of the closure (figs. 1 and 2) for the purpose of having varying design shape. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to have modified the references as described in par. 6 with a cap capable of having two separation seams inclined to the central middle axis of the closure, as taught by Neveras, in order to have varying design shape.

10. Claim 10 is rejected under 35 U.S.C. 103(a) as being obvious over the references as described in par. 6. The references as described in par. 6 disclose the limitations of the claims excluding two separation seams oriented such that they have different inclines with respect to the central middle axis of the closure. However, Leach does teach a mechanical equivalent to the aforementioned technical feature including two separation seams perpendicular to the central middle axis of the closure. Therefore

it would have been obvious to one having ordinary skill in the art at the time of invention to have modified the references as described in par. 6 with two separation seams oriented such that they have different inclines with respect to the central middle axis of the closure in order to have varying design options. Moreover a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. A Change in aesthetic (ornamental) design generally will not support patentability. *In re Seid*, 73 USPQ 431.

#### ***Response to Arguments***

11. Applicant's arguments filed 12/10/2007, with respect to the rejection(s) of claim(s) 1 under 35 U.S.C. 102(b) have been fully considered and are persuasive. In particular, Leach does not have a snap hinge. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made, in par. 6 above in response to those arguments.

#### ***Conclusion***

12. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the

claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER B. MCKINLEY whose telephone number is (571)272-3370. The examiner can normally be reached on Monday-Thursday, 7:00 AM - 5:30 PM.

14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. B. M./  
Examiner, Art Unit 3781

/Anthony D Stashick/  
Anthony Stashick  
Supervisory Patent Examiner, Art Unit 3781